



U. S. Fish and Wildlife Service

Marine Mammal Protection Act Incidental Take Regulations - Florida Manatee Frequently Asked Questions

(updated April 13, 2001)

Q1: What is the Marine Mammal Protection Act?

A1: The Marine Mammal Protection Act (MMPA) of 1972, as amended, (16 U.S.C. 1361-1407) was enacted to provide federal protection of all marine mammals and specifically contains a moratorium on the taking and importation of marine mammals with certain exceptions.

Q2: What is “take”?

A2: “Take”, as defined by the Marine Mammal Protection Act section 3(13), means “to harass, hunt, capture, or kill, or attempt to harass, hunt, capture, or kill any marine mammal.” Our implementing regulations (50 CFR 18.3) further clarify “take” as to harass, hunt, capture, collect, or kill, or attempt to harass, hunt, capture, collect, or kill any marine mammal, including, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal. “Harassment” is defined under the MMPA as any act of pursuit, torment, or annoyance which - (i) has the potential to injure a marine mammal or marine mammal stock in the wild; or (ii) has the potential to disturb a marine mammal or marine mammal stock in the wild by causing disruption of behavioral patterns, including, but not limited to migration, breathing, nursing, breeding, feeding, or sheltering. You can find other relevant definitions at 50 CFR 18.27(c).

Q3: What are the Incidental Take Regulations?

A3: One of exceptions to the prohibition against take provided by the MMPA is contained in Section 101(a)(5)(A). This section authorizes us, on request, to allow for a specific activity (other than commercial fishing) in a specific geographical region the incidental, unintentional take of small numbers of a species or stock of marine mammals if certain findings are made and regulations prescribed. In order to do this, we must find that the total effect of such taking during the specified time period (of up to

five years) will have a negligible impact on the species or stock and will not have an unmitigable impact on the availability of such species or stock for subsistence uses. If we make such a finding then we must prescribe regulations setting forth the details associated with such taking and establishing the requirements for monitoring and reporting take of the species.

Q4: Why are you proposing these Incidental Take Regulations?

A4: Development of incidental Take Regulations allow other federal agencies, State and local governments and private parties that conduct activities that may cause take of manatees to work with the us to receive authorization for that take if we can show that mutual efforts by all participants in the process will minimize take to a negligible level. The MMPA regulations would pull together local, State and Federal manatee conservation efforts; thereby improving manatee protection while providing more efficient and predictable regulatory programs for watercraft-related activities.

Q5: What is your legal authority to establish these Incidental Take Regulations?

A5: Our legal authority stems from the MMPA of 1972, as amended, (16 U.S.C. 1361-1407) as implemented under 50 CFR 18.27.

Q6: Are these Incidental Take Regulations going to affect my recreational or commercial use of Florida's waterways?

A6: Not directly. The promulgation of Incidental Take Regulations will not change any of the laws, regulations or procedures currently in place by which local, State, and Federal governments regulate watercraft-related activities. However, once the regulations are in place, agencies wishing to obtain authorization for take under the regulations may need to modify their regulatory programs in order to ensure that incidental take of manatees resulting from those programs is minimized to the negligible level in accordance with the Incidental Take Regulation.

Q7: Are these Incidental Take Regulations going to affect my ability to build a dock or boat ramp on my private property?

A7: Maybe. As stated above, the promulgation of Incidental Take Regulations will not change any of the laws, regulations or procedures currently in place by which local, State, and Federal governments regulate watercraft-related activities, including permitting of watercraft access facilities (docks, boat

ramps, marinas, etc.). These regulatory programs currently restrict, or prohibit, construction of watercraft access facilities in certain cases, including projects that would result in adverse impacts to manatees or other natural resources. However, if an agency that administers a permit program seeks a Letter of Authorization under these regulations, they may need to alter their procedures to ensure that incidental take associated with permits issued under that program has a negligible impact on manatees. This could result in additional requirements and conditions being placed on permit applicants. It is impossible to determine whether any additional restrictions on permitting of watercraft access facilities will eventually result from this process. Such determinations can only be made after it is determined through the rule-making process what level of incidental take can be considered to have a negligible impact on the manatee, and after specific regulatory programs seek Letters of Authorization and are reviewed. The form the regulations will take, including specific terms regarding how the regulations will be implemented and enforced will be determined through the rulemaking process.

Q8: Are these special regulations going to affect my property rights?

A8: This rulemaking will not prohibit anyone from accessing their property by boat, or from developing and using their property in ways that are not already restricted or prohibited.

Q9: Will the public be given an opportunity to participate in this process?

A9: Yes. An Advance Notice of Proposed Rulemaking was published in the *Federal Register* on March 12, 2001 (Volume 66, Number 48, pages 14352-14354) advising the public we are initiating our process for developing these Incidental Take Regulations. Public comment on our Advance Notice process was open until April 11, 2001. There will also be opportunity for public comment on the proposed regulations once they are formulated and published in the *Federal Register*, but before they are finalized. We anticipate that it will take between 14 and 20 months to develop draft regulations.

Q10: Does the Service consider economic and quality of life impacts on citizens when developing these Incidental Take Regulations?

A10: The determination regarding what level of incidental take would result in a negligible impact to manatees is solely biologically based. However, we always consider the impact on local economies and public quality of life when making decisions which will result in additional regulations, per the requirements of applicable federal laws, policies and Executive Orders, including but not limited to the National Environmental Policy Act, Regulatory Flexibility Act, and Small business Regulatory

Q11: Are you singling out watercraft as the primary cause of manatee mortality?

A11: No. We acknowledge that watercraft-related mortality is not the only cause for manatee deaths. It is, however, the number one cause of human-related deaths and development of these regulations offer us an opportunity to implement sound, effective, risk-reduction management actions. Adult survival rates are one of the key criteria we consider in gauging success of our recovery efforts, and implementation of these special regulations will address some of the human actions which may affect this rate.

Q12: What percentage of boat mortality will be addressed by these Incidental Take Regulations?

A12: The Incidental Take Regulations are not designed to target a specific percentage of manatee mortality. They are instead intended to provide specific authorization within precise guidelines for government agencies to allow certain actions which would otherwise be prohibited.

Q13: Are you coordinating development of these Incidental Take Regulations with the state?

A13: Yes.

Q14: I thought the you were already designating additional manatee protection areas, do we really need these additional Incidental Take Regulations?

A14: Manatee protection areas are one tool we have for addressing watercraft-related injury and harassment of manatees. These Incidental Take Regulations are broader in scope and provide the framework within which to address the effects of all government activities related to watercraft. Thus the two actions are independent, but related in that both address human actions which impact the Florida manatee.

Q15: How is the settlement between the Save the Manatee Club, et. al., a number of

boating and development interests, the U.S. Fish and Wildlife Service, and the Army Corps of Engineers impacting this process?

A15: In the settlement, we agreed to a time frame for announcing our Incidental Take Regulation development process, as well as for preparing the rule. We identified the need for these Incidental Take Regulations and preliminary planning was already underway before the lawsuit was filed.

Q16: What is the final status of litigation between the Save the Manatee Club and the State of Florida?

A16: Please contact the Florida Fish and Wildlife Conservation Commission or Save the Manatee Club for information related to the state lawsuit.

Q17: How will these Incidental Take Regulations be enforced?

A17: The regulations will be enforced through the issuance of Letters of Authorization. Any action contrary to the terms of the Letter of Authorization could result in the loss of liability protection. The specific form the regulations will take will be determined through the rulemaking process.

Q18: Since the State of Florida's 2001 manatee count was higher than expected, why is the Service proceeding with the Incidental Take Regulations?

A18: We are very pleased with this year's count and see these numbers as indicative of the success of many long-term conservation efforts. However, manatees are protected under both the Endangered Species Act and the MMPA, both of which prohibit take of protected species unless otherwise authorized.

Q19: When will your draft Incidental Take Regulations be available for public review?

A19: The process of reviewing information and data, and coordinating with multiple federal and State agencies will require a significant amount of effort. We anticipate that it will take between 14 and 20 months to develop proposed regulations.

Q20: When will your final Incidental Take Regulations be published?

A20: After we publish proposed regulations, there will be an opportunity for public comment. We must then address the comments and recommendations expressed during the comment period and revise the proposed regulation accordingly, prior to publishing the final rule. The process of moving from the publication of the draft rule to publication of the final rule generally takes several months.

Q21: Will these Incidental Take Regulations mean added costs to permit applicants?

A21: The form the regulations will take, including decisions regarding how the regulations will be implemented will be determined through the rulemaking process.

Q22: What are the next steps in the process?

A22: We will take into consideration all comments and any additional information received during the public comment period for the Advance Notice in developing the proposed rule. Once we have developed the proposed rule, we will publish it in the *Federal Register* and receive public comments on that proposed rule; there will also be an opportunity to request a public hearing(s). Once that comment period ends, we will again review the comments and information received, and make our final determination. We will publish our final rule in the *Federal Register*. Throughout the process we will continually update our website with current information relative to each step of the rulemaking process. Our website is located at <http://northflorida.fws.gov>.

Q23: How can I stay up to date with this issue?

A24: Throughout the process we will continually update our website with current information relative to each step of the rulemaking process. The website will also have the capacity to accept your comments electronically. Our website is located at <http://northflorida.fws.gov>. You may also request to be added to our mailing list by writing to: Manatee Mailing List, U.S. Fish and Wildlife Service, Jacksonville Field Office, 6620 Southpoint Dr., South, Suite 310, Jacksonville, FL 32216.